IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2817 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEIRS OF DECEASED NATHABHAI K PATEL & 7 & 7 - Appellant(s)
Versus
STATE OF GUJARAT & 1 & 1 - Defendant(s)

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Appearance :
MR SURESH M SHAH for Appellant(s) : 1 - 8.MR MEHUL S SHAH for Appellant(s) : 2 - 8.
MR UDAY BHATT A.G.P. for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 02/03/2007

ORAL JUDGMENT

1. The original applicants of Land Reference Case No. 152/1984 filed in the Court of 2nd Extra Assistant Judge, Rajkot at Gondal have filed this appeal under

Section 54 of the Land Acquisition Act, 1894 [hereinafter referred to as the “Act”] for enhancement of the compensation. Their agricultural lands bearing survey no. 40/1 admeasuring H-0-Are-89 sq. mtr., situated at village Ishra in Taluka Gondal have been acquired for construction of Porbandar Upleta Highway. It is a Bagayat land. Notification under Section 4 (1) of the Act was published on 29th October, 1981 and it was followed by declaration under Section 6 of the Act which was published on 2nd August, 1982. After complying with all the necessary formalities the Special Land Acquisition Officer i.e., respondent no. 2 made award under Section 11 of the Act. He determined the market value of the land at Rs.125=00 per Are. Since the appellants were dissatisfied with the quantum of compensation they preferred application under Section 18 of the Act with a request for making reference to the Court for enhancement of the compensation. Accordingly, the reference was made and it was numbered as Land Reference Case No. 152/1984. Before the Reference Court the appellants claimed Rs.625=00 per Are. According to them, the land was fertile land and of superior quality i.e,. Bagayat land and it was situated adjacent to the highway. They averred that the market value determined by respondent no. 2 was very low. They also averred that because of the severance of the land, one portion had become totally useless for the purpose of cultivation. It was also averred that more

than the area shown in the notification under Section 4 of the Act was acquired. This claim was resisted by the respondents by filing written statement. According to them, the award of respondent no. 2 was just and proper and required no enhancement in the compensation.

2. Before the Reference Court the parties led evidence, oral as well as documentary and on the basis of the same, the Court held that the market value determined by respondent no. 2 was on lower side. The Court, therefore, increased at Rs.375=00 per Are by its award dated 21st November, 1984. In other words, the Court granted additional compensation of Rs.250=00 per Are. Being dissatisfied with the quantum of compensation awarded by the Reference Court, the appellants have preferred this appeal.

3. I have heard Mr. Mehul S Shah learned advocate for the applicants and Mr. Bhatt learned A.G.P., for the respondents. It is submitted by Mr. Shah that the Reference Court has not taken into consideration the relevant sale instances relied on by the appellants and that has resulted into miscarriage of justice. He has further submitted that even when the part of the land in question has been rendered totally useless for the purpose of cultivation, no compensation is awarded by the Reference Court for the same. Lastly, he has submitted

that the respondents have acquired more than the land reflected under the notification and no compensation has been awarded for the excess land. As against that Mr. Bhatt learned A.G.P., has supported the judgment and has submitted that the quantum of compensation determined by the Reference Court is just and proper.

4. Having carefully considered the submissions of the learned advocates and having gone through the record and proceedings of the case, it appears that the land was Bagayat land and it was acquired for construction of the highway. There is no dispute that the road was constructed through survey no. 40/1, dividing it into two parts. The areas of land under acquisition was 8,900 sq. mtr. i.e., 89 Are. The dispute is with regard to quantum of compensation. According to Mr. Shah the Reference Court has not properly assessed the market value. He has drawn my attention to Exh. 52, 53 and 58. Exh. 52 is the agreement to sale dated 12th April, 1982. It is in respect of adjoining land i.e., survey no. 42. In pursuance of this agreement, sale deed was executed on 11th April, 1983, almost one year thereafter. The land was sold at Rs.37,500=00, admeasuring 6070 sq. mtr., the price approximately worked out to Rs.625=00 per Are i.e., Rs.6.25 per sq. mtr. He has also placed reliance at Exh. 58. It is a sale deed in respect of land bearing survey no. 178/1. It is falling within the boundary of Upleta.

The sale deed is dated 20th January, 1981. The land admeasuring 7876 sq. mtr., has been sold under this sale deed at the price of Rs.39,000=00 which roughly worked out to Rs.495=00 per Are. This land is also very near to the land under acquisition since it is situated just cross the road on highway. The Reference Court has however, not taken these sale instances into consideration on the ground that so far as the land of survey no. 42 was concerned the transaction was subsequent to the date of notification under Section 4 of the Act. In the present case, as stated above, notification under Section 4 (1) of the Act was published on 29th October, 1981, whereas agreement to sale was executed in respect of the land bearing survey no. 42 on 12th April, 1982. The difference is hardly six months. It also appears that at the same price it has been sold by sale deed dated 11th April, 1983. Therefore, from the point of view of time, the present transaction is almost in the vicinity of the sale transaction of land bearing survey no. 42. It is a relevant sale instance since, the land is situated just adjoining the land in question and the sale transaction is almost contemporary. Exh. 53 shows that the land is sold at Rs.625=00 per Are. Even if 10% deduction is made then also the price work out to Rs.563=00 per Are, approximately. Exh. 58 is dated 20th January, 1981. It is about nine months prior to the date of notification under Section 4 (1) of the Act. It is in

respect of land bearing survey no. 178/1 of Upleta Taluka. This land is also in the vicinity of the land in question. Since it is situated just cross the road, it is found by the Reference Court that the land of Upleta, Ishra, Rabarika and Rajpara are having equal fertility. The Reference Court has however, placed reliance on the award made by the Court in Land Reference case no. 76/1984. At Exh. 67 and Land Reference Case no. 80/1984 at Exh. 68 and also award made by the Court in Land Reference case no. 240/1989 at Exh. 69. The subject matter of these cases are situated in Sim of village Rabarika and Rajpara. They have been acquired for the purpose of Venu-II Irrigation Scheme. On the basis of the same, the Reference Court has determined the market value at Rs.375=00 per Are. It may be noted that the land forming the subject matter at Exh. 67 is Jiyarat land i.e., of inferior quality than the land in question. Of course, the Reference Court has taken this into consideration and has fixed the market value at Rs. 375=00 per Are by increasing it by one and half time, but the learned Judge has totally overlooked the fact that the sale instances relied on by the appellants were genuine and they were almost contemporary. Instead of placing reliance on the award, the Reference Court ought to have placed reliance on the sale instances which were genuine and it ought to have determined the market value on the basis of the same. In respect of land at Exh. 58, the market value has

been determined at Rs.495=00 per Are. The transaction has taken place about eight to nine months prior to the notification under Section 4 of the Act. It is adjoining land. Hence, the learned Judge ought to have determined the market value on the basis of the same. That has not been done. To that extent, the decision of the trial Court is erroneous and it is required to be quashed and set aside. The market value therefore, is required to be determined at Rs.495=00 per Are in place of Rs.375=00 per Are, as fixed by the reference Court.

5. The next submission of Mr. Shah is with regard to part of the land being rendered useless. He has submitted that the road i.e., bypass of the highway between Upleta and Porbandar land, through, survey No. 40/1 has divided the land into two parts, and the southern potion of the land has been reduced into small parcel of land, admeasuring 32 Gunthas where no cultivation is possible. He has drawn my attention to the record of the case including the photographs to substantiate his submission. Govindbhai Nathalal witness no. 1 of the applicant is the son of original claimants and one of the appellants herein. His evidence is at Exh. 25. He has stated that the land was irrigated land and the water was drawn from the well by using electric motor. He has further stated that because of the construction of the road the land was divided into

two parts and one part was admeasuring 2 Vighas where no cultivation was possible. He has further stated that because of the intervening road, it was not possible to irrigate the land by drawing water from the well which was situated on the other side of the road. He has stated that if it is converted into non agricultural land, the substantial portion of it will have to be left as margin land because of the highway and that would cause considerable loss to the crop. On this aspect, there is no effective cross-examination. In view of the same, it clearly appears that the southern portion of the land has been reduced in its size considerably. The appellants have produced photographs as well as sketch of this land. The sketch also confirms this fact. The photographs show that during monsoon the water gets accumulated on this land because on both the sides there are roads which serves as embankment and do not allow the water to pass. Of course, the evidence of this witness also shows that the cultivation is not totally stopped, but nevertheless it appears from the record that considerable injury has been caused to this piece of land. Mr. Shah has placed reliance on Section 23 of the Act and in particular, clause thirdly and, fourthly of the said Section for grant of compensation for such damage. He has pressed into service the decision of the Division Bench of this Court rendered in the case of **Amirbibi Wd/o. Hajiabdul Karim v. Special Land Acquisition Officer reported in**

1981 GLR pg.590, not only to substantiate his submission, but also to show how the assessment of the compensation can be made in such cases. In paragraph 5 the Division Bench has held as under "-

> "5. In First Appeal No. 408/75, the claimants have also assailed the decision of the learned trial Judge by which he disallowed the claim for injurious affection. The claimants submit that the learned trial Judge erred in holding that they were not entitled to any damages (that is to say compensation) for the severance of their lands. They have claimed Rs.3/- per sq. meter as severance charges. The only evidence led by the claimants is the deposition of Abdulrehman Haji (Exh. 24) who deposed that Rs.3/- per sq. metre has been claimed for injurious affection for severance. The learned trial Judge observed in his judgment while discussing Point No. 5 that except the bare word of the claimant No. 4, Abdulrehman Haji, there is no evidence to show the precise nature and extent of the injurious affection. He also observed that there is no evidence that the margin was required to be kept under the rules framed under the Land Revenue Code. Consequently, he disallowed this claim for injurious affection. The learned Government Pleader, Mr. Nanavati, fairly accepted that on account of the splitting up of the claimants' lands on account of the laying down of the road through the acquired lands in question there would certainly be injurious affection, but his argument was that it was for the claimants to prove the extent of injurious affection and that if the claimants have chosen not to do so, it would not be open to the Court to enter into the field of conjecture in determining the extent of injurious affection. We have considered the argument of Mr. Nanavati and he is right when he submits that if the claimants had examined an expert, he could have given us an idea about the extent of the depreciation in value which the remaining land is likely to suffer on account of injurious affection. But it cannot be gainsaid that even if the expert had been examined, he would have to enter into a guess work to reach a precise opinion about the extent of severance. The value of the expert's evidence is that it

assists the Court in reaching a particular conclusion where technical assistance is necessary. However, it cannot be laid down as a rule of law that where expert assistance is not available and where a reasonable guess can be made from whatever evidence that is on record, the Court would be precluded from doing so only because the expert evidence is not led in a particular case. We have perused certified copy of the sketch which is to be found at Exh. 67. It discloses that the proposed road splits up the claimant's land bearing Survey No. 376 into two parts and we further find that both of them are rendered de-shaped. The southern piece is triangular in shape while the northern piece acquires an awkward shape. It also appears that a large chunk from the claimants' land is acquired and the resultant two pieces are comparatively of very small size. The consequent injurious affection would consist of the fact that the remaining two pieces will have a reduced saleability in the market. In view of the fact that the land does not remain a compact and a composite block, the potentiality of its residential and commercial development would also be affected. Now, so far as the potential harm to the claimants is concerned, even for an expert it would remain a guess as there cannot be an instance to provide guidance. In such cases, necessarily the injurious affection is required to be estimated on individual basis and a search for a guideline from an instance would be a futile attempt as indeed no instance can be found for a loss or damage which stands on a peculiar and special footing. In such circumstances, we are of the view that damage suffered by the claimants cannot go uncompensated altogether and we must make our best endeavour to mete out justice to them, although we must be on a guard in doing so as our conclusion must be based on a broad basis and common sense inference. We are, therefore, of the opinion having taken the pros and cons of the questions into account that if we allow the claimants the compensation for injurious affection to the extent of Rs.2/- per sq. metre, it would serve the purpose. The market value of the acquired land is reached on the basis of the instances and now our estimate of the injurious affection to the remaining portion works out at less than 1/6th of it and it appears to us that seeing from this point of view also our estimate is fair and reasonable”.

6. There is as such no evidence of the actual loss suffered by the appellants *vis-a-vis* this piece of land, but at the same time, they have been successful to establish the fact that they have suffered some damage. From the decision of the Division Bench the facts of this case can well be equated with the facts of the case before the Division Bench and on the basis of the same, the market value determined by this Court can be awarded by way of compensation to the appellants.

7. So far as the last submission of Mr. Shah is concerned, the acquisition of the main land is concerned, there is no reliable evidence on record. It is also not on record whether the appellants had ever made any application to the DLR for taking measurement of the land in spite of the fact that in response to their notice they were intimated to get it done by giving requisites fees. No application is also made to the Reference Court for physical verification of the measurement, irrigation of the land in question. In view of the same, this submission of Mr. Shah cannot be accepted.

8. To sum up, the finding with regard to the reference Court determining the market value of the land in question is solely modified and it is held to be

Rs.495=00 per Are in place of Rs.375=00 per Are. It is further directed that the appellants would be entitled to receive 1/6th of the market value determined by this Court by way of compensation for the damage caused to the southern portion of the land. In other words, the compensation will be paid at the rate of Rs.82.50 paise per Are for the land admeasuring 32 Gunthas which comes to 34 Are and 24 sq. mtr., with all the incidental statutory benefits in accordance with the decision of the Apex Court in the case of **Sunder v. Union of India, reported in 2001 (3) GLR pg. 446**.

9. The appeal is, therefore, partly allowed with no order as to costs.

10. R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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